

APPENDIX

Sixth Amendment, Constitution of the United States:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial; by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Fourteenth Amendment, Constitution of the United States:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 1408, Vernon's Annotated Texas Penal Code:

"If any person by assault, or violence, or by putting in fear of life or bodily injury, shall fraudulently take from the person or possession of another any property with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary for life, or for a term of not less than five years; ***"

Article 245, Vernon's Annotated Texas Code of Criminal Procedure:

"When the accused has been brought before a magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel."

Article 246, Vernon's Annotated Texas Code of Criminal Procedure:

"The magistrate may at the request of either party postpone the examination to procure testimony; but the accused shall in the meanwhile be detained in custody unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason."

Article 247, Vernon's Annotated Texas Code of Criminal Procedure:

"Before the examination of the witnesses, the magistrate shall inform the accused that it is his right to make a statement relative to the accusation brought against him, but at the same time shall also inform him that he cannot be compelled to make any statement whatever, and that if he does make such statement, it may be used in evidence against him."

Article 248, Vernon's Annotated Texas Code of Criminal Procedure:

"If the accused desires to make a voluntary statement, he may do so before the examination of any witness, but not afterward. His statement shall be reduced to writing by or under the direction of the magistrate, or by the accused or his counsel, and shall be signed by the accused by affixing his name or mark, but shall not be sworn to by him. The magistrate shall attest by his own certificate and signature to the execution and signing of the statement."

Article 249, Vernon's Annotated Texas Code of Criminal Procedure:

"The magistrate shall, if requested by the accused or his counsel, or by the prosecutor, have all the witnesses placed in charge of an officer, so that the testimony given by one witness shall not be heard by any of the others."

Article 250, Vernon's Annotated Texas Code of Criminal Procedure:

"If any person appear to prosecute as counsel for the State, he shall have the right to question the witnesses on direct or cross-examination; and the accused or his counsel has the same right. Should no counsel appear, either for the State or for the defendant, the magistrate may examine the witnesses; and the accused has the same right."

Article 251, Vernon's Annotated Texas Code of Criminal Procedure:

"The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial."

Article 252, Vernon's Annotated Texas Code of Criminal Procedure:

"The examination of each witness shall be in the presence of the accused."

Article 253, Vernon's Annotated Texas Code of Criminal Procedure:

"The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate."

Article 254, Vernon's Annotated Texas Code of Criminal Procedure:

"The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he

may do without having previously issued a subpoena for that purpose."

Article 255, Vernon's Annotated Texas Code of Criminal Procedure:

"The magistrate may issue an attachment for a witness to any county in the State, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and, if the facts set forth are not considered material by the magistrate, or, if they be admitted to be true by the adverse party, the attachment shall not issue."

Article 256, Vernon's Annotated Texas Code of Criminal Procedure:

"A witness attached need not be tendered his witness fees or expenses."

Article 257, Vernon's Annotated Texas Code of Criminal Procedure:

"The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ."

Article 258, Vernon's Annotated Texas Code of Criminal Procedure:

"After examining the witnesses in attendance, if it appear to the magistrate that there is other important testimony which may be had by a postponement, he shall, at the request of the prosecutor or of the defendant, postpone the hearing for a reasonable time to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper

officer until the day fixed for such further examination. No postponement shall take place, unless a sworn statement be made by the defendant, or the prosecutor, setting forth the name and residence of the witness, and the facts which it is expected will be proved. If it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or, if the same be admitted to be true by the adverse party, the postponement shall be refused."

Article 259, Vernon's Annotated Texas Code of Criminal Procedure:

"Upon examination of one accused of a capital offense, no magistrate other than a judge of the Court of Criminal Appeals, district court or county court, shall have power to discharge the defendant. Any magistrate may admit to bail, except in capital cases where the proof is evident."

Article 260, Vernon's Annotated Texas Code of Criminal Procedure:

"Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case."

Article 261, Vernon's Annotated Texas Code of Criminal Procedure:

"After the examining trial has been had, the magistrate shall make an order committing the defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require."

Article 262, Vernon's Annotated Texas Code of Criminal Procedure:

"If there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit to the nearest safe jail in any other county."

Article 263, Vernon's Annotated Texas Code of Criminal Procedure:

"The commitment in the case mentioned in the preceding article shall be directed to the sheriff of the county to which the defendant is sent, but the sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff to whom he is sent."

Article 264, Vernon's Annotated Texas Code of Criminal Procedure:

"A commitment is an order signed by the proper magistrate directing the sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

• • • • • "

Article 265, Vernon's Annotated Texas Code of Criminal Procedure:

"Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner."

Article 266, Vernon's Annotated Texas Code of Criminal Procedure:

"A discharge by a magistrate upon an examination of any person accused of an offense shall not prevent a second arrest of the same person for the same offense."

Article 749, Vernon's Annotated Texas Code of Criminal Procedure:

"Depositions taken in criminal actions shall not be read unless oath be made that the witness resides out of the State; or that since his deposition was taken, the witness has died; or that he has removed beyond the limits of the State; or that he has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that, by reason of age or bodily infirmity, such witness cannot attend. When the deposition is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person."

Article 750, Vernon's Annotated Texas Code of Criminal Procedure:

"The deposition of a witness taken before an examining court or jury of inquest, and reduced to writing, and certified according to law, in cases where the defendant was present when such testimony was taken, and had the privilege afforded him of cross-examining the witness, may be read in evidence as is provided in the preceding article for the reading of depositions."

Article 486a, Vernon's Annotated Texas Code of Criminal Procedure:

"Section 1. This Act may be cited as the 'Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings.'

* * * * *

"Section 3. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this State certifies under seal of such court that there is a criminal prosecution pending in such court,

or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

"If at a hearing the judge determines that the witness is material and necessary, that it will not cause undo hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, (and any other state through which the witness may be required to pass by ordinary travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where the grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

• • • • • "

FILE COPY

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1964

Office-Supreme Court, U.S.
FILED
JAN 18 1965
JOHN F. DAVIS, CLERK

NO. 577

BOB GRANVILLE POINTER,

Petitioner

v.

THE STATE OF TEXAS,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF TEXAS

BRIEF FOR RESPONDENT

WAGGONER CARR
Attorney General of Texas

HAWTHORNE PHILLIPS
First Assistant Attorney
General

STANTON STONE
Executive Assistant
Attorney General

HOWARD M. FENDER
Assistant Attorney General

GILBERT J. PENA
Assistant Attorney General

ALLO B. CROW, JR.
Assistant Attorney General
Attorneys for Respondent,
The State of Texas
Capitol Station
Austin 11, Texas